BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAI`I

- - - - In the Matter of the Application of - -)	PUC Docket 2008-0273
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PUBLIC UTILITIES COMMISSION)	
)	
Instituting a Proceeding to)	
Investigate the Implementation)	
Of Feed-In Tariffs)	

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LIFE OF THE LAND'S

FINAL STATEMENT OF POSITION

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CERTIFICATE OF SERVICE

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March 30, 2009

Aloha Commissioners,

LIFE OF THE LAND ("LOL")
FINAL STATEMENT OF POSITION

Life of the Land respectfully offers its Final Statement of Position (FSOP) regarding the implementation of feed in tariffs for Hawaiian Electric Company. Inc. ("HECO"), Maui Electric Company Ltd. ("MECO") and the Hawaii Electric Light Company, Ltd. ("HELCO") (collectively: HECO Companies).

Introduction

Hawaiian Electric Company ("HECO") created Hawai'i Electric Industries ("HEI") as a holding company to own HECO (which owns MECO and HELCO) in 1981-83 because HECO alleged that a parent company could more easily create unregulated HECO sister companies to aggressively implement renewable energy development.

Twenty years later, and with no increased renewable energy penetration, HECO adopted a new tactic by creating a subsidiary, Renewable Hawai'i Inc ("RHI") because HECO then asserted that an unregulated subsidiary would be more effective in implementing renewable energy projects. No RHI projects have come on-line.

Now HECO is giving up both the parent and the child approach with the new Hawai'i Clean Energy Initiative (HCEI) approach which is premised upon the fact that HECO itself can promote rapid renewable energy penetration levels. This new path is based on several untested, undocumented, and unsupported assumptions, including.

(1) HECO balance sheet should be re-structured to lower the cost of capital;
(2) HECO should be guaranteed a rate of return through decoupling;
(3) HECO should re-enter the energy efficiency market;
(4) HECO should build renewable energy systems
(5) HECO risks should be transferred onto the backs of competitors and ratepayers.
(6) There should be no on-ramps for non-utility companies;
(7) The Public Utilities Commission ("Commission") should be overhauled;
(8) Intensive capital infrastructure grid improvements should be mandated
(9) Inter-island cables should be built
(10) Automatic approval of HECO projects should occur

During the transition period to this new paradigm, HECO requested the suspension of HECO, MECO and HELCO's Integrated Resource Planning (short-term and long-term planning processes) in order to ram and jam a number of transformative regulatory proceedings through the regulatory process. Originally the Draft Framework for the replacing planning process -- the Clean Energy Scenario Planning ("CESP") -- was slated to be filed with the Public Utilities Commission by the end of March, 2009. But perhaps because some of the ram and jam dockets are going slower than HECO would have preferred, the CESP Draft Framework filing with the Commission has been delayed by a month.

POSITIONS ON THE ISSUES IDENTIFIED IN THE PROCEDURAL ORDER:

A. Purpose of Project-Based Feed-in Tariffs (PBFiTs)

1. What, if any, purpose do PBFiTs play in meeting Hawai'i's clean energy and energy independence goals, given Hawai'i's existing renewable energy purchase requirements by utilities?

Feed-In Tariffs (FiTs) are Standard Offer Contracts (agreements) by a utility to purchase electricity from renewable energy at a set rate from anyone willing to sell the electricity. The rate varies by type of renewable energy, by the size of the system, and by the island that the system is located on. Anyone can go to a public website and look at the prices that the utility will pay for each type of renewable energy, for each size category, for each island. Thus a renewable

energy company will be able to finance projects because developers will know in advance that for a given system there is a guaranteed rate, a guaranteed revenue stream designed to cover the cost of a typical renewable energy system and a built-in rate of return. Developers who design systems with lower than average costs will be rewarded with higher profits.

There is a gulf between the positions of the parties in this docket on this issue that is based on a fundamental difference in the perceived role and purpose of feed-in tariffs for Hawai'i. At one side, non-HCEI signatories promote a conception of feed-in tariffs as the primary means to bring on large amounts of all sizes of renewable generation resources quickly, as seen in the European feed-in tariff implementation. At the other side is a conception promoted by the utilities of feed-in tariffs as a niche application of standard offer contracts for a limited amount of renewable distributed generation. Spanning this gulf of perspectives are several policy and factual issues that beg resolution.

2. What are the potential benefits and adverse consequences of PBFiTs for the utilities, ratepayers and the state of Hawai'i?

FiTs are open, transparent, processes that can lead to rapid deployment of renewables. An adverse impact, at least to some vested interests, is the rapid replacement of obsolete, climate change inducing fuels with cleaner indigenous fuels. PBFiT's could potentially provide large amounts of renewable energy resources for the State of Hawai'i. One potential adverse consequence would be higher near term retail electricity prices resulting from levelized contracts that could be substantially higher than near term avoided costs. This would be partially or fully offset by lower taxpayer subsidies to fossil fuel producers. The magnitude of rate impacts has not been determined but it is important to consider, among other things, whether large customer would exit the utility electric grid to self-generation using fossil fuels.

3. Why is or is not the PBFiT the superior methodology to meet Hawai'i's clean energy and energy independence goals?

FiTs are a transparent, easily understood approach that limits manipulation and gaming of the system, and where they have been used, has led to rapid renewable energy penetration.

B. Legal Issues

4. What, if any, modifications are prudent or necessary to existing federal or state laws, rules, regulations or other requirements to remove any barriers or to facilitate the implementation of a feed-in tariff not based on avoided

costs?

Legislation is now proceeding through the current Hawai'i legislative session to amend HRS 269-27.2 to remove the prohibition for the Commission to establish wholesale rates above avoided cost. Two essentially identical bills (HB1270 and SB461) are proceeding unopposed are likely to become law. Federal PURPA law, of course, remains.

5. What evidence must the commission consider in establishing a feed-in tariff and has that evidence been presented in this investigation?

There is important evidence missing regarding several matters in this investigation. LOL notes that little, if any, of the information sought in Appendix A: Cost Data Forms of the scoping paper in this docket or any similar data sufficient to determine FiT tariffs based on project cost has been submitted. Evidence regarding rate impacts is entirely missing. Regarding the standard for sufficient evidence, LOL asserts that the same standard of a preponderance of substantial, probative evidence that would apply in a rate case should apply in determining wholesale rates.

HECO plans to include some of the missing data as part of its next CESP filing, which will occur at least 12 months after the Commission issues an order opening the new CESP docket, and this will occur after the docket to work out the kinks in the new CESP Framework has been dealt with. HECO should not be allowed to delay FiT implementation and should have the burden of proof in asserting any artificial limits or restrictions.

C. Role of Other Methodologies

6. What role do other methodologies for the utility to acquire renewable energy play with and without a PBFiT, including but not limited to power purchase contracts, competitive bidding, avoided cost offerings and net energy metering?

There are several existing methods for procurement of renewable energy resources in Hawai'i, including net energy metering, unsolicited bids, competitive bidding and avoided cost offerings per Schedule Q tariffs. The role and relationship between each of these procurement methods is not clear and should be clarified. For each type and size of potential new renewable generation resource there should be an appropriate procurement mechanism and this should be clearly designated. If there is limited capacity for new renewable generation then the relationship of limits, caps and queues for the various procurement mechanisms needs to be clearly determined.

Feed-In Tariffs (FiTs) are agreements by a utility to purchase electricity from renewable energy at a set rate from anyone willing to sell the electricity. The rate varies by type of renewable energy, by the size of the system, and by the island that the system is located on. Anyone can go to a public website and look at the prices that the utility will pay for each type of renewable energy, for each size category, for each island.

Thus a renewable energy company will be able to finance projects because developers will know in advance that for a given system there is a guaranteed rate, a guaranteed revenue stream designed to cover the cost of a typical renewable energy system and a built-in rate of return. Developers who design systems with lower than average costs will be rewarded with higher profits.

Wheeling allows a renewable energy company to sell renewable power to an governmental end user by renting the electric grid. This is a common practice on the mainland and their is currently an open docket before the Hawai'i Public Utilities Commission to examine implementing it in Hawai`i.

Both Wheeling and FiTs are open, transparent, processes that can lead to rapid deployment of renewables.

Another approach is **Competitive Bidding**, whereby the utility puts our a Request For Proposal ("RFP") for renewables and examines the submittals to determine the winners, if any. The process is permitted in Hawai`i, but is not transparent, can lead to gaming the system, and most importantly, has not lead to a rapid penetration of renewable energy. In fact, no competitively bid renewable energy systems have been deployed since the Commission Order establishing Competitive Bidding.

HECO asserts that Competitive Bidding will be used for large systems, and that FiTs should be restricted to micro and mini systems, and that a separate approach is needed for small and mid-size systems (1-5 MW). HECO is soliciting "**Unsolicited Proposals**" (UPs) to fill up the bin of new renewable energy systems before the FiTs are approved by the Commission.

The utility has brokered a deal with Castle & Cooke (Lana`i) and First Wind (Moloka`i), through **Bilateral Agreements** ("BLAs"), has negotiated a deal whereby, if everything goes as planned, in six years, 400MW of wind energy will be produced on Lana`i and Moloka`i to be transmitted to O`ahu via undersea cable.

The use of secret BLAs, secret UPs, and blocking the implementation of

Wheeling and severely limiting the role of FiTs serves three purposes: (1) it keeps the utility firmly in the drivers seat; (2) it relies on secret negotiations and agreements; and (3) it forces renewable energy companies who want their system installed to make secret deals with the utility. In addition, to date, it has to date failed to propel the State into using more renewables.

D. Best Design for a PBFiT or alternative method

7. What is the best design, including the cost basis, for PBFiTs or other alternative feed-in tariffs to accelerate and increase the development of Hawai'i's renewable energy resources and their integration in the utility system?

LOL does not have a position on this issue pending more information regarding how much new renewable generation of each type could be accommodated on the existing and future generation and transmission grids. Until this information is established it is difficult to determine a prudent tariff design, whether the tariffs should attempt to capture modest amounts of the most cost-effective generation or large amounts of generation at the higher end of the range of project-based costs.

LOL notes that some types of generation resolve rather than exacerbate grid integration issues. For resources that are firm and/or dispatchable more aggressive pricing could be established. A feed-in tariff design could unbundle some component of the price offered to compensate for ancillary services.

The Commission should consider Time of Demand rates to reward companies that can provide baseload power and/or power during peak demand periods.

E. Eligibility Requirements

8. What renewable energy projects should be eligible for which renewable electricity purchase methods or individual tariffs and when?

In general, FiT should be used to support rapid implementation of clean, indigenous, low-climate-impact (small greenhouse-gas-footprint) renewable energy projects.

FiTs should be offered for all existing technologies and their should be a low-cost generic FIT rate for any firm renewable energy with no caps. This will allow new technologies to enter the marketplace right away.

There is still no generation and transmission system plan that identifies how much of each type of generation is compatible or necessary to accommodate new renewable generation. It is not known how much of each type of renewable generation can be accommodated. It is not known what measures, improvements and investments in utility system infrastructure would be necessary to accommodate various amounts of new renewable generation. It is not known when, whether or to what extent any measures being taken to accommodate substantial amounts of new renewable generation on the utility systems will be effective. There is no estimate of any sort of what impacts the proposed (or any other) feed-in tariffs will have on generation costs or retail rates. The rate impacts are entirely unknown.

One way to get around the propensity for the utility to fight renewable energy projects is to adopt a Decoupling rate mechanism which theoretically makes the utility indifferent to whether the power transmitted and sold is what they produce or what renewable energy companies produce, or what is offset with energy efficiency. The utility is guaranteed a certain profit by maintaining the grid, having high levels of reliability (minimizing outages) and providing energy services.

After the utility becomes indifferent to renewable energy implementation, there are a number of ways or mechanisms that can be deployed to rapidly increase renewable energy penetration levels.

F. Analysis of the cost to consumers and appropriateness of caps

9. What is the cost to consumers and others of the proposed feed-in tariffs?

The cost to consumers of the proposed feed-in tariffs is entirely unknown. No information on this issue has been submitted prior to this FSOP.

10. Should the commission impose caps based upon these financial effects, technical limitations or other reasons on the total amount purchased through any mechanism or tariff?

To the extent that there is limited capacity or need for new generation resources on the utility generation and transmission grids it would be necessary either to establish some limits to prevent unneeded generation or excessive curtailment of generation resources or to willingly finance unneeded or curtailed energy. If limits are provided there would have to be some method of establishing queues to determine which projects would have priority within the limited capacity. If queues are established, the relationship between the queues and available capacity

would have to address projects in and the relationship between all of the resource procurement methods.

G. Procedural Issues

11. What process should the commission implement for evaluating, determining and updating renewable energy purchased power mechanisms or tariffs?

The Commission could consider evaluating all of its renewable generation procurement procedures to assure that they comprise a cohesive set of consistent policies. It is not clear now, for example, what is the relationship between unsolicited bids and other procurement methods. If there are queues under limits the relationships of the different procurement methods will become important.

CERTIFICATE OF SERVICE

I hereby certify that I have this date filed and served the original and eight copies of the foregoing **LIFE OF THE LAND'S FINAL STATEMENT OF POSITION AND PROPOSED FEED-IN TARIFF** in Docket No. 2008-0273, by hand delivery to the Commission and two copies to the Consumer Advocate at the following address:

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I hereby further certify that I have this date served one copy upon each of the following parties, of the foregoing **LIFE OF THE LAND'S FINAL STATEMENT OF POSITION AND PROPOSED FEED-IN TARIFF** in Docket No. 2008-0273, by causing each such copy thereof to be sent via e-mail in a portable document format ("pdf") to each such party as follows:

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